UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 2 0 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

7015 0640 0001 0675 5647

Friesland Campina DOMO
Attn: Mr. Mark Roach, Plant Manager
40196 State Highway 10
Delhi, NY 13753

Re: Notice of Violation: EPA Docket No. CAA-02-2017-1302

Dear Mr. Roach:

Pursuant to Section 113(a)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(1), Region 2 of the United States Environmental Protection Agency ("EPA") issues the enclosed Notice of Violation ("NOV") to Friesland Campina DOMO ("Friesland"). The NOV identifies Friesland's violations of New York Code of Rules and Regulations, Title 6, Sections 201-6 (Title V Facility Permits), 202-2 Emission Statements), and 212-3 (Reasonably Available Control Technology for Major Facilities). These violations all resulted from Friesland's unpermitted construction and operation of an uncontrolled "pit" stack emission point for toluene, and its total emissions of more than 50 tons per year of toluene since at least 2007.

If Friesland would like to schedule a face-to-face conference to discuss the NOV, please have your legal counsel contact Chris Saporita, Assistant Regional Counsel, at Saporita.Chris@epa.gov, within ten days of your receipt of this letter and the enclosed NOV. Should you have technical questions please contact Steve Carrea, Environmental Engineer, at Carrea.Steve@epa.gov.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosure

cc: Thomas Christoffel, Regional Air Pollution Control Engineer
New York Department of Environmental Conservation, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Friesland Campina DOMO
Delhi, New York

Respondent

In a proceeding under Section 113(a) of the
Clean Air Act, 42 U.S.C. § 7413(a)

NOTICE OF VIOLATION

CAA-02-2017-1302

Summary

The Director of the Division of Enforcement and Compliance Assistance ("DECA") for the United States Environmental Protection Agency ("EPA") Region 2 issues this Notice of Violation ("NOV") to Friesland Campina DOMO ("Friesland" or "Respondent"), pursuant to Section 113(a)(1) of the Clean Air Act ("CAA" or the "Act)", 42 U.S.C. § 7413(a)(1). The NOV identifies Friesland's two violations of New York Code of Rules and Regulations, Title 6, Section 201-6.2(a)(3), 6 N.Y.C.R.R. § 201-6.2(a)(3), which implements, in part, Title V of the CAA and the requirements of 40 C.F.R. Part 70, for failure to apply for a permit to construct a new emission unit and failure to apply for a modification of its Title V permit within one year of the commencement of operation of that unit, respectively. In addition, the NOV identifies Friesland's two violations of 6 N.Y.C.R.R. §§ 202-2.3(a)(3)(xii) and (xiii), 202-2.3(c)(2), and 202-2.5(a), for failure to submit and maintain annual reports of fugitive emissions of volatile organic compounds ("VOCs") and its two violations of 6 N.Y.C.R.R. § 212-3.1(f), for failure to perform a Reasonably Available Control Technology ("RACT")

demonstration and implement RACT when the operation of the emission unit commenced, all in violation of New York's federally enforceable CAA State Implementation Plan ("SIP"). These violations all resulted from Friesland's unpermitted construction and operation of an uncontrolled "pit" stack emission point for toluene, and its total emissions of more than 50 tons per year of toluene since at least 2007.

Statutory and Regulatory Background

Applicable Clean Air Act Title V Requirements

1. Title V of the Clean Air Act prohibits the operation of, among other things, any major source of air pollution, without an operating permit containing emissions limits, monitoring, and reporting requirements. 42 U.S.C. §§ 7661 – 7661f. The EPA promulgated regulations implementing the requirements for State-issued Title V operating permits at 40 C.F.R. Part 70.

2. The New York State Title V Facility Permit Regulations ("Title V Regulations"), located at 6 N.Y.C.R.R. Part 201, implement numerous requirements of the CAA, and apply to, among other things, any "major source." 6 N.Y.C.R.R. § 201-6.1(a)(1).

3. New York's Title V Regulations define a "major source" as, among other things, a "source … that is located … within the ozone transport region … with the potential to emit…50 tpy or more of volatile organic compounds (VOC)…." and a "source … that emits or has the potential to emit, in the aggregate, 10 [tons per year (tpy)] or more of any hazardous air pollutant ["HAP"] as defined in Part 200 … (including any fugitive emissions of such pollutant), [or] 25 tpy or more of any combination of such HAPs (including any fugitive emissions of such pollutants) …" 6 N.Y.C.R.R. § 201-2.1(b)(21)(ii) and (iv)(a).

4. 6 N.Y.C.R.R. § 201-6.1(a) requires an owner or operator of a major source to obtain an operating permit ("Title V Permit") before operating the source, and 6 N.Y.C.R.R. § 201-6.2(a)(3) requires "the owner or operator of an existing Title V facility, which is being modified by the addition of

a new emission unit comprised solely of new emission sources" to apply for a State facility permit, prior to commencement of construction of the new emission unit, to authorize the construction and operation of the new emission unit, and to obtain a modification of its Title V permit within one year of the commencement of operation of the new emission unit.

Applicable New York State Implementation Plan Requirements

5. Pursuant to Section 109 of the CAA, 42 U.S.C. § 7409, the EPA has established National Ambient Air Quality Standards ("NAAQS") for each air pollutant for which it has issued air quality criteria pursuant to Section 108 of the Act, 42 U.S.C. § 7408.

6. Section 110 of the Act, 42 U.S.C. § 7410, requires States to develop and implement State Implementation Plans ("SIPs") that ensure the attainment of the federal NAAQS in each air quality control region within those States.

7. Section 184 of the Act, 42 U.S.C. § 7511c, designates the northeastern states, including all of New York State, as a single "ozone transport region," and requires all sources in that region that emit 50 tons per year or more of VOCs to use reasonably available control technology ("RACT") to control those emissions.

8. 40 C.F.R. § 51.100(s), which applies to SIPs, defines "volatile organic compound" as, in relevant part, "any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions."

9. At all times relevant to this NOV, the federally approved SIP for the State of New York has included 6 N.Y.C.R.R. Part 200 ("General Provisions"). *See* 6 N.Y.C.R.R. § 200.1 and 6 N.Y.C.R.R. § 200.7.

10. At all times relevant to this NOV, the NY General Provisions have included the following definitions:

- "Person" means: "Any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever." § 200.1(bi).
- "Air contaminant or air pollutant" means: "A chemical, dust, compound, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof." § 200.1(d).
- "Air contamination source" means: "Any apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system or air cleaning device. Where a process at an emission unit uses more than one apparatus, contrivance or machine in combination, the combination may be considered a single emission source." § 200.1(f).
- The list of regulated "hazardous air pollutants" includes toluene. § 200.1(ag).
- "Lower Orange County metropolitan area" means "The area including the Towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury." § 200.1(al).
- "Reasonable available control technology ("RACT")" means "Lowest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility." § 200.1(bq).

11. At all times relevant to this NOV, the federally approved SIP for the State of New York has included 6 N.Y.C.R.R. Part 212. On June 3, 2015, the Subparts of Part 212 were renumbered, but continue to contain all of the requirements applicable to this NOV. ("General Process Emission Sources").

12. Pursuant to 6 N.Y.C.R.R. § 212-3.1(a)(2) [former § 212.10(a)(2)], facilities located outside the lower Orange County or New York City metropolitan areas with an annual potential to emit 50 tons or more of VOCs must demonstrate and implement RACT.

13. Pursuant to 6 N.Y.C.R.R. § 212-3.1(f) [former § 212-10(f)], facilities subject to § 212-3.1(a) that commence construction after August 15, 1994 of an emission point with emission rates of at least 3.0 pounds of VOCs per hour and actual emissions in the absence of control equipment of at least 15 pounds of VOCs per day must submit a RACT demonstration for those VOC emissions with each application for a permit to construct, and must implement RACT on any such emission points when operations commences.

14. Pursuant to 6 N.Y.C.R.R. § 212-3.1(e) [former § 212-10(e)], once a source is subject to the RACT requirements, it remains subject to them, even if its annual potential to emit VOCs later falls below the applicability threshold. *See also,* EPA Memo, "Once-in/Always-in" Requirement for Applicability (August 23, 1990).

15. At all times relevant to this NOV, the federally approved SIP for the State of New York has included 6 N.Y.C.R.R. Part 202.

16. Pursuant to 6 N.Y.C.R.R. § 202-2.1(a)(1), the requirements of 6 N.Y.C.R.R. Subpart 202-2 apply to "…any owner or operator of a facility located in New York State which is determined to be a major source as defined in Subpart 201-2 of this Title for all or any part of such calendar year."

17. Pursuant to 6 N.Y.C.R.R. §§ 202-2.3(a)(3)(xii) and (xiii), 202-2.3(c)(2), 202-2.4(a), and 202-2.5(a), major sources must annually report process and fugitive emissions of all regulated air contaminants and maintain those reports for 5 years.

The EPA's Authority to Issue NOVs and Enforce SIPs

18. Pursuant to Section 113(a)(1) of the CAA, whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated, or is in violation

of, any requirement or prohibition of a SIP, the Administrator shall notify the person and the state in which the SIP applies of such finding and, 30 days after issuing such notice, the Administrator may take various actions to address the violation(s), including issuing an order requiring compliance, issuing an administrative penalty order, or bringing a civil enforcement action in federal district court.

19. Pursuant to Section 113(a)(3) of the CAA, whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated, or is in violation of, any requirement or prohibition of, among other things, Title V of the Act, the Administrator may take various actions to address the violation(s), including issuing an order requiring compliance, issuing an administrative penalty order, or bringing a civil enforcement action in federal district court.

20. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the authority to make findings of violation and to issue notices of violation under Section 113 of the CAA has been delegated to the Director of DECA by the EPA Administrator through the EPA Region 2 Regional Administrator.

Findings of Fact

21. The following findings of fact are based on an investigation conducted by EPA Region 2 pursuant to Section 114 of the CAA, 42 U.S.C. § 7414. The investigation included, among other actions, an inspection of Respondent's facility and review of records provided by Respondent as a result of the EPA's inspection.

22. Friesland operates a hydrolyzed protein manufacturing operation located at 40196 State Highway 10 Delhi, NY 13753.

23. Friesland operates under a Title V permit because it has a potential to emit greater than 10 tons per year of toluene and greater than 25 tons per year of total HAPs.

24. EPA Region 2 inspected Friesland on July 12, 2016 through July 13, 2016. On each of these dates, Friesland granted the EPA access to Friesland's facility and facility personnel were present

to answer questions and provide requested records.

25. During the EPA inspection at the Friesland facility on July 13, 2016, the EPA discovered that Friesland had erected a "pit" stack emission unit through which it was emitting toluene without having obtained a permit to construct the emission unit and without having modified its Title V operating permit to include the emission unit and applicable controls.

26. Also during the EPA inspection, the EPA measured VOC readings through a sampling port in the "pit" stack with a photoionization detector ("PID"), and measured a reading of near 20,000 parts per million ("ppm") inside the stack, which is the maximum detection limit of the instrument. The EPA also obtained documentation from the facility that facility personnel had previously measured a reading of 15,000 ppm from the same sampling port.

27. The EPA utilizes a photoionization detector with a 10.6 eV lamp. This instrument is capable of detecting toluene, which has an ionization energy of 8.82; allowing the lamp to supply enough energy to ionize the compound and provide for detection.

28. Based on the PID measurements of 15,000 ppm by the facility and 20,000 ppm by the EPA, and a blower capacity of 1,100 cubic feet per minute (CFM) on the "pit" stack, the EPA estimates that this emission point has a potential to emit of toluene of greater than 215 lb/hr.

29. In addition, Friesland reported a toluene emission rate of 63.2 tons per year to the EPA's Toxic Release Inventory in 2007, and a VOC emission rate of 54.91 tons per year to the New York State Department of Environmental Conservation (NYSDEC) emission inventory in 2011.

30. The following table summarizes all reported emission rates from Friesland to both New York State and EPA databases:

	NYS Emission Inventory System (TPY)		EPA Toxic Release Inventory (TPY)		
Year	Total VOC	Total HAP (toluene)	Stack Toluene Emissions	Fugitive Toluene Emissions	Total Toluene (Stack + Fugitive)
2015			0.0025	38.0	38.0
2014	41.58	1.49	0.75	38.5	39.3
2013	5.79	0	3.65	41.0	44.7
2012	4.31	0	2.0	49.0	51.0
2011	54.91	2.61	2.65	50.15	52.8
2010	5.01	0	2.5	43.0	45.5
2009	No Data	No Data	4.15	45.0	49.2
2008	46.7	3.4	3.4	45.0	48.4
2007	4.2	18.98	15.7	47.5	63.2

31. Toluene is a VOC because it is a compound of carbon which participates in atmospheric photochemical reactions.

32. Friesland supplied the EPA with the following toluene usage based on Friesland's purchase records:

Year	Toluene Purchased (tons per year)
2016	38.2 (as of 8/11/16)
2015	51.1
2014	53.5

Conclusions of Law

Based on the Findings of Fact set forth above, the EPA reaches the following conclusions of law:

33. Friesland is a "person" within the meaning of the 6 N.Y.C.R.R. § 200.1(bi).

34. Friesland has the potential to emit greater than 50 tons per year of toluene, which is both a HAP and a VOC, and is therefore a "major source" subject to 6 N.Y.C.R.R. §§ 201-6.2(a)(3), 202-2 and § 212-3.1 [former § 212-10].

35. Friesland constructed a new emission unit, the "pit" stack, and has since been emitting toluene, without a permit to construct, in violation of 6 N.Y.C.R.R. § 201-6.2(a)(3) and Title V of the Clean Air Act.

36. Friesland failed to apply for a modification of its existing Title V permit within one year of the commencement of operation of the new emission unit, in violation of 6 N.Y.C.R.R. § 201-6.2(a)(3) and Title V of the Clean Air Act.

37. Friesland became subject to 6 N.Y.C.R.R. § 212-3.1(f) [former § 212.10(f)] in 2007 when its actual air emissions of VOCs exceeded 50 tons per year as reported to the New York State Department of Conservation emission inventory. Further, actual air emissions of VOCs exceeded 50 tons per year again in 2011 and 2012 as reported by Friesland.

38. Friesland became subject to 6 N.Y.C.R.R. § 202-2 when it became a major source of HAPs.

39. Friesland failed to perform a RACT demonstration before commencing operation of the "pit" stack, in violation of 6 N.Y.C.R.R. § 212-3.1(f) [former § 212.10(f)], which is part of New York's State Implementation Plan.

40. Friesland failed to install RACT before commencing operation of the "pit" stack, or limit the potential to emit of toluene below 50 tons per year with a federally enforceable permit condition, in violation of 6 N.Y.C.R.R. § 212-3.1(f) [former § 212.10(f)], which is part of New York's State Implementation Plan.

41. Friesland violated 6 N.Y.C.R.R. §§ 202-2.3(a)(3)(xii) and (xiii), 202-2.3(c)(2), 202-2.4(a), which are part of New York's State Implementation Plan, by failing to accurately report its toluene emissions in its annual emissions statements for 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015.

42. Friesland failed to maintain the above reports of its toluene emissions for at least 5 years, in violation of 6 N.Y.C.R.R. § 202-2.5(a), which is part of New York's State Implementation Plan.

Enforcement

Section 113(a)(1) of the CAA authorizes the EPA to take any of the following actions in

response to a respondent's violation(s) of a SIP, after the expiration of 30 days following the issuance of a notice of violation:

- Issue an order requiring compliance with the requirements or prohibitions of the SIP;
- Issue an administrative penalty order in accordance with CAA Section 113(d); or
- bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

The amount of civil penalties that may be recovered for violations of the CAA and its implementing regulations is set by statute at not more than $25,000 per day per violation, but has been adjusted pursuant to the Debt Collection Improvement Act, 31 U.S.C. 3701 *et seq*., to up to $27,500 per day for each violation that occurs from January 30, 1997 through March 15, 2004, up to $32,500 per day for each violation that occurs from March 15, 2004 through January 12, 2009, up to $37,500 per day for each violation that occurs from January 12, 2009 through November 2, 2015, and up to $93,750 per day for each violation that occurs after November 2, 2015 where the penalties are assessed on or after August 1, 2016. *See* 40 C.F.R. Part 19 and 81 F.R. 43091 (July 1, 2016).

Furthermore, for any person who knowingly violates any requirement or prohibition of an applicable SIP beyond (30) days from the date of the issuance of an NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, for facilities to be eligible for federal contracts, grants and loans, they must be in full compliance with the Act and all regulations promulgated pursuant thereunder. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

Penalty Assessment Criteria

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, the EPA or a federal district court, shall, in determining the amount of the penalty to be assessed,

take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows the EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, the EPA will consider a violation to be continuing from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, the EPA will reduce the penalty accordingly.

Opportunity for a Conference

Respondent may request a conference with the EPA concerning the violation(s) alleged in this NOV. This conference will enable Respondent to present evidence regarding the findings of violation, the nature of the violation, and any efforts it may have taken or it proposes to take to achieve compliance. Respondent's request for a conference must be confirmed in writing within ten (10) days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made by email to saporita.chris@epa.gov or in writing to:

Chris Saporita
U.S. Environmental Protection Agency – Region 2
Office of Regional Counsel
290 Broadway – 16th Floor
New York, NY 10007-1866

Notwithstanding this NOV and the opportunity for conference, Respondent must comply with all applicable requirements of the CAA.

Issued: DEC 2 0 2016

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

To: Friesland Campina DOMO
Attn: Mr. Mark Roach, Plant Manager
40196 State Highway 10
Delhi, NY 13753

cc: Thomas Christoffel, Regional Air Pollution Control Engineer
New York Department of Environmental Conservation, Region 4

Enclosure 2

CAA § 113

§ 7413.

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies; or

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced

(A) during any period of federally assumed enforcement, or

(B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411 (e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475 (a) of this title (relating to

preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV–A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter [2]

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV–A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)

(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation

placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602 (e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued

(i) during any period of federally assumed enforcement, or

(ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV–A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.

Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)

(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to

attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604 (a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607 (a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604 (a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV–A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a

corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON **December 21, 2016, I** MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT** REQUESTED, **ARTICLE NUMBERS 7015-0640-0001-0675-5647** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

Mr. Mark Roach, Plant Manager
Friesland Campina DOMO
40196 State Highway 10
Delhi, New York 13753

Geraldo Villaran

Geraldo Villaran